

9-138.000

**PROHIBITION AGAINST CERTAIN PERSONS
HOLDING OFFICE AND EMPLOYMENT --
29 U.S.C. §§ 504 AND 1111**

9-138.010	Introduction
9-138.020	Investigative and Supervisory Jurisdiction
9-138.030	Consultation Prior to Prosecution
9-138.040	Consultation Prior to Relief of Convicted Individuals From Labor-Management and Pension-Welfare Position Disqualification
9-138.100	Reduction and Exemption Proceedings Under 29 U.S.C. § 504 and 29 U.S.C. § 1111
9-138.130	Coordination with the Department of Labor
9-138.150	Litigating Authority of Department of Labor Attorneys in District Court Proceedings Under ERISA -- 29 U.S.C. § 1111
9-138.160	Special Appointment of Department of Labor Attorneys in District Court Proceedings Under LMRDA (29 U.S.C. Sec. 504)
9-138.170	Delegation of United States Attorney's Responsibility to Appear on Behalf of Federal Prosecuting Officials
9-138.180	Conflict Resolution
9-138.200	Civil Actions -- Coordination

9-138.010 Introduction

Section 504 prohibits persons convicted of certain crimes from being employed as labor union officials, corporate employees engaged in labor-management relations, and as labor relations consultants. The statute applies only to labor unions and employers in the private sector which are regulated by the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. § 401, *et seq.*).

Section 1111 prohibits persons convicted of certain crimes from being employed by employee pension or welfare benefit plans regulated by the Employee Retirement Income Security Act (ERISA) and as consultants to such plans. *See* 29 U.S.C. § 1001, *et seq.* Convicted individuals are disqualified automatically by operation of the statute upon sentencing.

See also the Criminal Resource Manual at 2442.

9-138.020 Investigative and Supervisory Jurisdiction

For information on investigative jurisdiction in 29 U.S.C. §§ 504 and 1111 cases, see the Criminal Resource Manual at 2443. Questions should be directed to the Labor Management Unit of the Organized Crime and Racketeering Section, Criminal Division, which has supervisory authority over these statutes.

9-138.030 Consultation Prior to Prosecution

Prior to instituting grand jury proceedings, as well as seeking an indictment, or filing an information, under either 29 U.S.C. § 504 or 29 U.S.C. § 1111, consultation is required with the Criminal Division through the Labor-Management Unit of the Organized Crime and Racketeering Section. Because the underlying purpose is to eliminate undesirable persons from the labor movement in the case of 29 U.S.C. § 504 or from access to or management of the assets of an employee benefit plan in the case of 29 U.S.C. § 1111, a procedure of notification prior to proceeding with criminal prosecution has been adopted by the Criminal Division in certain cases. *See* the Criminal Resource Manual at 2444.

In the absence of a clear demonstration of a knowing and intentional violation of either statute, the disqualified individual and the responsible person(s) who permit(s) the disqualified person to serve in violation of either statute are notified and given the opportunity to vacate the prohibited position and avoid prosecution. This policy furthers the remedial purposes of the statute and has generally resulted in compliance by the affected individuals. Following consultation with the Criminal Division, the procedure need not be used where available evidence indicates that the affected individuals were aware that the disqualified person's service was prohibited by reason of conviction at the time such service was rendered. For a discussion of the elements of the offenses of violating 29 U.S.C. §§ 504 and 1111, see the Criminal Resource Manual at 2445 and 2446. For form indictments, see the Criminal Resource Manual at 2447 and 2448.

It should be noted that convicted organizations are treated differently from convicted individuals for purposes of the ERISA disability. Convicted corporations and partnerships are not automatically disqualified upon sentencing from prohibited service with employee benefit plans as described in 29 U.S.C. § 1111. The Federal sentencing court (or a United States District court for the district where the disqualifying state crime was committed) must first determine, after notice to the convicted organization, the prosecuting attorney, and the Secretary of Labor, that the convicted organization's service would be inconsistent with the purposes of the ERISA disability. 29 U.S.C. § 1111(a)(B).

9-138.040 Consultation Prior to Relief of Convicted Individuals From Labor-Management and Pension-Welfare Position Disqualification

The Labor-Management Unit of the Organized Crime and Racketeering Section recommends that it be consulted by telephone whenever a United States Attorney's Office learns that a convicted individual seeks relief from the employment or office holding disqualifications of 29 U.S.C. §§ 504 or 1111. The Labor-Management Unit can advise attorneys of the procedures to be followed in such proceedings and assist in the coordination of these matters with the Labor Department. The Labor-Management Unit can assist whenever a convicted individual files in district court (for disqualifying crimes completed after November 1, 1987) or with the United States Parole Commission (for disqualifying crimes committed before that date) an application for exemption from disqualification in a particular position, moves a sentencing court for a reduction of the period of disqualification under the statutes, or whenever such relief is contemplated for inclusion in a plea or sentencing agreement. *See* Policy Statement Sec. 5J1.1, United States Sentencing Commission, *Guidelines Manual* (Effective June 15, 1988). Moreover, it should be noted that the Secretary of Labor's statutory rights to notice and representation in these relief proceedings may not be waived or negotiated away as a part of plea or sentencing bargains. *See* the Criminal Resource Manual at 2449, for additional information regarding this issue.

9-138.100 Reduction and Exemption Proceedings Under 29 U.S.C. § 504 and 29 U.S.C. § 1111

In addition to USAM 9-138.130 to 180 below, see the following sections of the Criminal Resource Manual for a more detailed discussion of the law relating to reduction and exemption proceedings.

Relief by Reduction of the Length of Disability	Criminal Resource Manual at 2449
Relief by Exemption from Disability in a Particular Prohibited Position	Criminal Resource Manual at 2450
Litigating Authority Before the United States Parole Commission	Criminal Resource Manual at 2451
Relief By Full Restoration of Citizenship Rights Revoked As the Result of a Disqualifying Conviction	Criminal Resource Manual at 2452

9-138.130 Coordination with the Department of Labor

In accordance with memoranda of understanding between the Secretary of Labor and the Attorney General, the Department of Labor is responsible for conducting the investigation concerning the appropriateness of granting an application for exemption from a disqualified individual's employment disability under both 29 U.S.C. § 504 and 1111. *See* the Criminal Resource Manual at 2443. Moreover, because it is the policy of the Department of Justice to treat motions for reduction of the period of disability similarly to applications for exemption, any investigation concerning the appropriateness of a reduction of the length of disability should also be conducted in cooperation with the appropriate office of the Department of Labor. *See* the Criminal Resource Manual at 2449.

Therefore, when either a motion for reduction of the length of disability or a petition for exemption from the disqualification is filed by the convicted individual in Federal district court, ordinarily it will be necessary to seek a continuance of the proceeding in order to allow the Department of Justice and the Department of Labor an adequate opportunity to coordinate their litigative positions and to provide sufficient time for any necessary investigation by the Office of Labor-Management Standards (29 U.S.C. § 504) or the Pension and Welfare Benefits Administration (29 U.S.C. § 1111) of the Department of Labor. At the time of sentencing, a continuance may be sought on the grounds that neither statutory disability is a part of the sentence and, therefore, relief may be considered in a separate and subsequent proceeding.

When relief by way of exemption or reduction of the disability is considered as part of a plea or sentence agreement, coordination with the Department of Labor furthers the statutory scheme which is intended to ensure that the disability not be set aside for purposes which are inconsistent with the Federal laws governing the internal affairs of labor unions and the operation of employee benefit plans. The Federal prosecutor should consider carefully the effect which the convicted offender's continued employment in regard to a labor union, employee benefit plan or employer association will have on the organization's members and participants. This effect should be outweighed by the benefits of obtaining the plea or sentence agreement.

9-138.150 Litigating Authority of Department of Labor Attorneys in District Court Proceedings Under ERISA -- 29 U.S.C. § 1111

With respect to disqualifying crimes committed on or after November 1, 1987, the Department of Labor has litigating authority in district court proceedings pertaining to relief from disqualification imposed by 29 U.S.C. § 1111. ERISA Section 502(j) provides that "in all civil actions under this subchapter, attorneys

appointed by the Secretary may represent the Secretary but all such litigation is subject to the direction and control of the Attorney General." 29 U.S.C. § 1132(j). An application for relief is viewed as a civil action because it involves a separate proceeding from the criminal prosecution and because the statutory prohibition is remedial rather than punitive in nature. *See DeVeau v. Braisted*, 363 U.S. 144 (1960).

Therefore, in relief proceedings arising under 29 U.S.C. § 1111 attorneys from the office of the Solicitor of Labor may be designated by the Secretary to appear on his behalf. Supervision of such litigation by the Attorney General is exercised by each United States Attorney for the judicial district where the proceeding for relief will be held in consultation with the Assistant Attorney General, Criminal Division, pursuant to 28 C.F.R. § 0.55(i).

9-138.160 Special Appointment of Department of Labor Attorneys in District Court Proceedings Under LMRDA (29 U.S.C. Sec. 504)

With respect to disqualifying crimes committed on or after November 1, 1987, the Department of Labor has no litigating authority under the LMRDA with respect to relief proceedings in United States District Court under 29 U.S.C. § 504. As a result, attorneys from the Office of the Solicitor of Labor must be specially appointed by the Department of Justice in order to appear on behalf of the Secretary of Labor. These appointments should be made upon the recommendation of the United States Attorney for the judicial district where the proceeding for relief will be held on a case-by-case basis pursuant to 28 U.S.C. § 543.

9-138.170 Delegation of United States Attorney's Responsibility to Appear on Behalf of Federal Prosecuting Officials

A United States Attorney's responsibility to appear in an United States district court on behalf of the Federal prosecuting officials who have standing to participate in relief proceedings may be delegated to those Department of Labor attorneys who are given special appointments pursuant to 29 U.S.C. § 543 or Department of Justice attorneys designated by the Assistant Attorney General, Criminal Division. *See* USAM 9-138.160. However, with respect to district court proceedings for relief under ERISA, attorneys appointed by the Secretary of Labor pursuant to ERISA and 29 U.S.C. § 1132(j) are authorized to represent only the Secretary of Labor. *See* USAM 9-138.150.

9-138.180 Conflict Resolution

Any conflict with respect to litigation strategy among representatives of the Secretary of Labor and the Federal prosecutors should be submitted to the Assistant Attorney General, Criminal Division, for review and recommended resolution. It is the policy of the Department of Justice that, in the absence of exceptional circumstances, each party to these relief proceedings be permitted to present to the district court its views on the merits for or against relief without regard to which agency represents that party.

See the Criminal Resource Manual at 2450 et seq.

Relief by Exemption from Disability in a Particular Prohibited Position	Criminal Resource Manual at 2450
Litigating Authority Before the United States Parole Commission	Criminal Resource Manual at 2451
Relief By Full Restoration of Citizenship Rights Revoked As the Result of a Disqualifying Conviction	Criminal Resource Manual at 2452

9-138.200 Civil Actions -- Coordination

Civil actions against the Department of Justice for declaratory judgment, injunction, and/or relief from the disabilities imposed by 29 U.S.C. §§ 504 and 1111 are coordinated with the Labor-Management Unit of the Organized Crime and Racketeering Section, Criminal Division.

A civil action to remove a fiduciary of an employee benefit plan for violation of 29 U.S.C. § 1111 may be brought by the United States Department of Labor, or by a benefit plan participant, beneficiary or fiduciary. *See* 29 U.S.C. §§ 1109(a) and 1132(a)(2). Civil actions litigated by the Department of Labor are subject to the direction and control of the Civil Division, United States Department of Justice. *See* 29 U.S.C. § 1132(j).